

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

KIANNA LITTLE,

Plaintiff,

-v.-

CAPITAL MANAGEMENT SERVICES, LP,

Defendant.

COMPLAINT

C.A. No.:

Plaintiff Kianna Little ("Plaintiff"), by and through her attorneys, Garibian Law Offices, P.C., as and for her Complaint against Defendant Capital Management Services, LP ("Defendant") respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of section 1692 et. seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").

PARTIES

2. Plaintiff is a resident of the Commonwealth of Pennsylvania, County of Philadelphia, residing at 3319 Aldine Street, Philadelphia, PA 19136.

3. Defendant is a debt collector with a mailing address of 698 ½ South Ogden Street, Buffalo, NY 14206-2317.

4. Defendant is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as well as 15 U.S.C. § 1692 *et. seq.* and 28 U.S.C. § 2201. The Court also has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is where a substantial part of the events or omissions giving rise to the claim occurred.

FACTUAL ALLEGATIONS

7. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully state herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, on a date better known to Defendant, Defendant began collection activities on an alleged consumer debt from the Plaintiff (“Alleged Debt”).

9. This debt was incurred as a financial obligation that was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5).

10. Specifically the Alleged Debt was a personal bill for educational services with the original creditor of Pennsylvania State University, which is defined as a personal obligation and consumer debt under the FDCPA.

11. On or around March 9, 2017, Defendant sent Plaintiff a collection letter. (See March 9, 2017 letter attached hereto as **Exhibit A.**)

Violation I

12. In the top portion of the letter Defendant states the “Amount of Debt: \$8216.38.”

13. Despite the fact that this debt is accruing interest the letter fails to notify Plaintiff that her balance may continue to increase over time due to the original creditor continuing to apply interest to the balance until the Alleged Debt has been satisfied.

14. This failure to disclose that interest is accruing on the Alleged Debt is misleading and deceptive because it does not advise Plaintiff that the balance due on her account was not static.

15. Furthermore, since the account is accruing interest, the balance claimed due and owing in the collection letter may not be the amount due at the time of payment because of additional interest applied to the account.

16. Plaintiff was easily deceived by this information and was unable to ascertain the exact amount she allegedly owed.

17. Plaintiff sustained an informational injury as Defendant has misleadingly and deceptively failed to disclose that the account is accruing interest and that the balance will continue to increase and change.

Violation II

18. Additionally, the letter contains the following language: “Settling a debt for less than the balance owed may have tax consequences and Discover may file a 1099C form. We cannot provide you with tax advice. If you have any questions, Discover encourages you to consult a tax advisor of your choosing.”

19. This statement is both false and deceptive as there are many factors which make up the requirement to file a 1099C. (See Good v. Nationwide Credit, Inc., 55 F. Supp. 3d 742, 746-747 (E.D.Pa. Oct. 27, 2014), finding that the statement “American express is required to file a form 1099C with the Internal Revenue Service for any canceled debt of \$600 or more.

Please consult your tax advisor concerning any tax questions,” is not true and does not accurately reflect the relevant law. The Court also found that the statement’s invocation of the IRS was deceptive and materially misleading.)

20. This letter does not indicate how much of the current debt is interest and how much is principal.

21. The letter fails to disclose to Plaintiff that there is a distinction between principal and interest with regard to IRS requirements.

22. With the lack of information provided in the letter, a sophisticated tax professional could not issue an opinion as to Plaintiff’s tax liability.

23. The inclusion of this IRS language only acts to overshadow the settlement offer as Plaintiff believed that if she paid less than the full balance owed she would have tax ramifications.

24. As a result of Defendant's deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

25. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

26. Defendant's debt collection efforts attempted and/or directed towards Plaintiff violate various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(2), 1692e(10) and 1692f.

27. As a result of the Defendant's violations of the FDCPA, Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kianna Little demands judgment from Capital Management Services, LP, as follows:

- a) For actual damages provided and pursuant to 15 U.S.C. § 1692k(a)1);
- b) For statutory damages provided and pursuant to 15 U.S.C. § 1692k(2)(A);
- c) For attorney fees and costs provided and pursuant to 15 U.S.C. § 1692k(a)(3);
- d) A declaration that the Defendant's practices violated the FDCPA; and
- e) For any such other and further relief, as well as further costs, expenses and disbursements of this action as this Court may deem just and proper.

Dated:

Respectfully Submitted,

GARIBIAN LAW OFFICES, P.C.



Antranig Garibian, Esq.

PA Bar No.: 94538

1800 JFK Blvd, Ste 300

Philadelphia, PA 19103

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Counsel for Plaintiff Kianna Little

EXHIBIT A

698 1/2 SOUTH OGDEN STREET
BUFFALO, NY 14206-2317

Reference# 102304780

T31 P1****AUTO**ALL FOR AADC 190

Kianna Little
3319 ALDINE ST
PHILADELPHIA, PA 19136-3801

March 09, 2017

Dear Kianna Little:

On behalf of DISCOVER BANK, Capital Management Services, LP, is willing to accept less than the full balance due as a settlement on the above mentioned account. The settlement offer shall be \$2054.10 due in our office on or before 03/23/2017. We are not obligated to renew this offer.

Upon clearance of sufficient funds, our records will be updated to reflect that the above account has been satisfied.

Our representatives are trained to offer assistance regarding this obligation. For payment arrangements or account inquiries, you may contact Capital Management Services, LP, at P.O. Box 964, Buffalo, NY 14220-0120 or call 1-800-518-6147 Mon. through Fri. 8 am to 9 pm ET, Sat. 8 am to 1 pm ET. You may also make payments online at: www.cms-trans.com.

Settling a debt for less than the balance owed may have tax consequences and Discover may file a 1099C form. We cannot provide you with tax advice. If you have any questions, Discover encourages you to consult a tax advisor of your choosing.

Due to the age of your account, Discover Bank is not able to file suit against you but if you take specific action such as making a payment or making a written promise to pay, the time for filing a suit will be reset. We would like to work with you to resolve your account balance.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.



CAPITAL MANAGEMENT SERVICES, LP

698 1/2 South Ogden Street Buffalo, NY 14206-2317

Office Hours: M-F 8 am - 9 pm ET
Sat 8 am - 1 pm ET

Toll Free: 1-800-518-6147, Fax: 716-512-6046

Original Creditor: DISCOVER BANK

Current Creditor: DISCOVER BANK

Description: PENNSYLVANIA STATE UNIVERSITY

Account #: XXXXXX9518

Amount of Debt: \$8216.38

AMOUNT ENCLOSED:

Current Address:

Current Phone #:

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT TO ADDRESS LISTED BELOW

***** 25% SETTLEMENT OFFER *****